AVOID A TITLE IX HOSTILE EUCATIONAL ENVIRONMENT CLAIM

More and more, school districts are encountered with lawsuits based on student-on-student sexual harassment in the school environment. In fact, this firm just recently was successful in dismissing such a claim in the United States District Court for the Middle District of Pennsylvania[1]. This article outlines how school districts can protect themselves from facing such claims.

By way of background, it is now well established that student-on-student harassment, if sufficiently severe, can rise to the level of discrimination actionable under Title IX of the Educational Amendments of 1972 (Title IX). For a student victim to properly allege a sexually hostile education environment under Title IX, the student victim must be able to establish he/she was subjected to sexual harassment that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victim's education experience, that the student victim is effectively denied equal access to a school district's resources and opportunities. *Davis v. Monroe Cnty. Bd. of Educ.,* 526 U.S. 629, 651 (1999). The student victim must also be able to show that the school acted "with deliberate indifference to known acts of harassment in its program or activities." Id. at 633.

Given the above law, school districts can avoid Title IX liability if they respond to known peer harassment in a manner that is not clearly unreasonable. Courts have consistently stated that school administrators enjoy flexibility in dealing with student-on-student sexual harassment. The courts, however, will hold school districts liable for complete inaction when known acts of harassment are brought to its attention. For example, in *Davis*, a fifth grade student endured continued sexual harassment by one of her classmates over a period of five months. Although the harassment was reported to teachers and the principal, the school board made no effort whatsoever either to investigate or to put an end to the harassment even after the student aggressor pled guilty to criminal sexual conduct. The Supreme Court held that under these circumstances, the school board's deliberate indifference to student harassment warranted Title IX liability.

It is also worth noting that the potential of Title IX liability does not exist until the school district has actual knowledge of the alleged sexual harassment. Vague, unreported rumors of harassment do not require a school district to take a responsive action as a matter of law. Also, simple acts of teasing or name calling amongst school children, or actions which are not sufficiently severe or objectively offensive, do not require action by the school district as a matter of law. Therefore, school districts are not bound to take action for every minor or random instance of alleged harassment in the context of Title IX. However, school administrators should never ignore a formal complaint of a severe, objectively offensive and pervasive report of sexual harassment and should properly document all steps taken to address and/or resolve the situation.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

1. *See, V.M., et. al v. Shamokin Area School District, 4:14-cv-1169 (M.D.Pa. 2014).*